

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SEAN PATRICK BURKE, <i>et al.</i> ,	:	
Plaintiffs,	:	
	:	
v.	:	Civil No. 5:23-cv-01959-JMG
	:	
CHIEF EDWARD BACHERT, <i>et al.</i> ,	:	
Defendants.	:	

ORDER

AND NOW, this 12th day of June, 2024, upon consideration of Defendants, Chief Edward Bachert, Officer Steven Fritzinger, Officer Matthew Devers, and Borough Manager Eric Gratz's Motion for Summary Judgment (ECF No. 76), Plaintiffs' Response (ECF No. 95), Motion for Summary Judgment of Defendant, Charles F. Zurick, III (ECF No. 81), Memorandum of Law in Support of Plaintiffs' Opposition To Defendant Charles F. Zurick, III's Motion for Summary Judgment (ECF No. 98), Plaintiffs' Notice of Motion for Partial Summary Judgment (ECF No. 88), Brief in Opposition to Plaintiffs' Motion for Partial Summary Judgment on Behalf of Fountain Hill Borough Defendants (ECF No. 97), Brief of Defendants, Charles F. Zurick, III, in Opposition to Plaintiffs' Motion for Partial Summary Judgment (ECF No. 101-2), Defendants, Chief Edward Bachert, Officer Steven Fritzinger, Officer Matthew Devers, and Borough Manager Eric Gratz's Motion *In Limine* to Preclude From Trial the Opinion and Testimony of Plaintiff's Proffered Police Expert Timothy Dixon (ECF No. 78), Plaintiffs' Response to Fountain Hill Defendants' Motion to Preclude the Expert Testimony of Timothy M. Dixon, Esquire (ECF No. 93), Defendants, Chief Edward Bachert, Officer Steven Fritzinger, Officer Matthew Devers, and Borough Manager Eric Gratz's Motion *In Limine* to Preclude From Trial the Opinion and Testimony of Plaintiff's Proffered Psychological Expert Dr. Eric R. Cohen, PhD. (ECF No. 79), Plaintiffs' Response to

Fountain Hill Defendants’ Motion to Preclude the Expert Testimony of Eric R. Cohen, PhD (ECF No. 92), Defendant, Charles F. Zurick, III’s, Motion to Preclude the Report and Testimony of Plaintiffs’ Psychological Expert Eric R. Cohen, Ph.D. (ECF No. 82), Plaintiffs’ Response to Defendant Zurick’s Defendants’ Motion to Preclude the Expert Testimony of Eric R. Cohen, PhD (ECF No. 91), Defendant, Charles F. Zurick, III’s, Motion to Preclude the Report and Testimony of Plaintiffs’ Economic Expert Andrew C. Verzilli, M.B.A. (ECF No. 84), Plaintiffs’ Response to Defendant Zurick’s Motion to Preclude the Expert Testimony of Andrew C. Verzilli (ECF No. 90), Plaintiffs’ Notice of Motion to Strike Defendants’ Untimely Filings (ECF No. 102), Fountain Hill Borough Defendants’ Response to Plaintiffs’ Motion to Strike Defendants’ “Untimely Filings” (ECF No. 103), and Response of Defendants, Charles F. Zuricks, III, to Plaintiffs’ Motion to Strike and Request for Extension of Time (ECF No. 104),

IT IS HEREBY ORDERED that Defendants, Chief Edward Bachert, Officer Steven Fritzinger, Officer Matthew Devers, and Borough Manager Eric Gratz’s Motion for Summary Judgment (ECF No. 76) is **GRANTED in part**.

- a. Defendants’ Motion is **GRANTED** as to Counts I (Fourth Amendment), III (Fourteenth Amendment), and IV (civil rights conspiracy).
- b. Judgment is **ENTERED** in favor of Defendant Bachert and against Plaintiffs as to Counts III (Fourteenth Amendment)¹ and IV (civil rights conspiracy).
- c. Judgment is **ENTERED** in favor of Defendants Fritzinger and Devers as to Count I (Fourth Amendment).
- d. Judgment is **ENTERED** in favor of Defendant Gratz as to Count IV (civil rights conspiracy).

¹ Count III (Fourteenth Amendment) is brought only by Plaintiffs Equinox and Burke.

- e. The Court declines to exercise supplemental jurisdiction over Plaintiffs' remaining state law claims for malicious prosecution (Count II) and trespass (Count V), and they are **DISMISSED without prejudice** as to Defendants Bachert, Fritzinger, and Devers.²

IT IS FURTHER ORDERED that the Motion for Summary Judgment of Defendant, Charles F. Zurick, III (ECF No. 81) is **GRANTED in part**.

- a. Defendant Zurick's Motion is **GRANTED** as to Counts IV (civil rights conspiracy).
- b. Judgment is **ENTERED** in favor of Defendant Zurick and against Plaintiffs as to Count IV (civil rights conspiracy).
- c. The Court declines to exercise supplemental jurisdiction over Plaintiffs' remaining state law claim for trespass (Count V), and it is **DISMISSED without prejudice** as to Defendant Zurick.

IT IS FURTHER ORDERED that Plaintiffs' Notice of Motion for Partial Summary Judgment (ECF No. 88) is **DENIED**.

IT IS FURTHER ORDERED that the Court declines to exercise supplemental jurisdiction over Defendant Zurick's state law counterclaims for private nuisance (Count I) invasion of privacy (Count II), and they are **DISMISSED** without prejudice as to Plaintiffs.

IT IS FURTHER ORDERED that Defendants, Chief Edward Bachert, Officer Steven Fritzinger, Officer Matthew Devers, and Borough Manager Eric Gratz's Motion *In Limine* to Preclude From Trial the Opinion and Testimony of Plaintiff's Proffered Police Expert Timothy

² Following our order on the motions to dismiss (ECF No. 49), malicious prosecution (Count II) remained only as to Defendant Bachert and unlawful seizure (Count I) remained only as to Defendants Fritzinger and Devers.

Dixon (ECF No. 78) is **DENIED as moot**.

IT IS FURTHER ORDERED that Defendants, Chief Edward Bachert, Officer Steven Fritzinger, Officer Matthew Devers, and Borough Manager Eric Gratz's Motion *In Limine* to Preclude From Trial the Opinion and Testimony of Plaintiff's Proffered Psychological Expert Dr. Eric R. Cohen, PhD. (ECF No. 79) is **DENIED as moot**.

IT IS FURTHER ORDERED that Defendant, Charles F. Zurick, III's, Motion to Preclude the Report and Testimony of Plaintiffs' Psychological Expert Eric R. Cohen, Ph.D. (ECF No. 82) is **DENIED as moot**.

IT IS FURTHER ORDERED that Defendant, Charles F. Zurick, III's, Motion to Preclude the Report and Testimony of Plaintiffs' Economic Expert Andrew C. Verzilli, M.B.A. (ECF No. 84) is **DENIED as moot**.

IT IS FURTHER ORDERED that Plaintiffs' Notice of Motion to Strike Defendants' Untimely Filings (ECF No. 102) is **DENIED**.

IT IS FURTHER ORDERED that the **Clerk of Court** is **DIRECTED** to mark this case **CLOSED**.

BY THE COURT:

/s/ John M. Gallagher
JOHN M. GALLAGHER
United States District Court Judge